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April 21, 2021

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk and Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia SC 29210

**Re: Cherokee County Cogeneration Partners, LLC v. Duke Energy Carolinas,
LLC and Duke Energy Progress, LLC
Docket Number: 2020-263-E**

Dear Ms. Boyd:

This letter responds to Cherokee County Cogeneration Partners, LLC's ("Cherokee") April 9, 2021, request ("the Request") to extend the terms of the 2012 power purchase agreement (the "2012 PPA") between Cherokee and Duke Energy Carolinas, LLC ("DEC" or "the Company") through the Commission's final determination in the above-captioned complaint proceeding. DEC continues to believe that it is in the best interest of the Company's customers to require that any extension of the 2012 PPA be fixed at the Company's current avoided cost, which is significantly lower than the avoided cost rates that DEC's customers are currently paying Cherokee under the 2012 PPA. However, in the interest of not repeating the same arguments that DEC made previously to the Commission on this issue, the Company opts to not oppose Cherokee's Request, but urges the Commission to limit the extension of the PPA to a defined period and continue to consider the risk to DEC's customers under this novel contractual arrangement.

As Cherokee described in its Request, Commission Order No. 2020-846 granted a 120-day extension of the 2012 PPA, which was intended to allow time for the Parties to participate in mediation and conduct discovery into the claims alleged in Cherokee's Complaint.¹ The 120-day extension began on January 1, 2021, and is now set to expire on April 30, 2021.

¹ Order No. 2020-846 was issued in response to Cherokee's Request for Interim Relief, which was filed in this docket on November 2, 2020.

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As DEC articulated in its Response to Cherokee's Request for Interim Relief (Cherokee's first request to extend the 2012 PPA), DEC's primary concern with extension of the 2012 PPA is that the rates paid to Cherokee by DEC's customers under the 2012 PPA are significantly higher than today's avoided cost rates and do not reflect DEC's actual avoided costs, which is the maximum rate that the Company would be required to purchase the output under PURPA. Moreover, as DEC has also explained, the Company's avoided capacity and energy costs have significantly declined since the 2012 PPA was executed. As a result, for each month that the 2012 PPA is extended, DEC's customers are paying excessive rates for the output from the Cherokee facility that are far beyond DEC's actual avoided cost.

Specifically, for the period January 1, 2021 through April 30, 2021, DEC estimates the overpayment amount under the continuation of the 2012 PPA is approximately \$900,000. Given the escalation in the capacity payment in the summer months under the 2012 PPA, the DEC expects the cumulative overpayment amount for the remaining eight months of 2021 would be approximately \$9.6 million, should the Commission extend the 2012 PPA further.

In addition to extending the 2012 PPA, Order No. 2020-846 reserved the Commission's right to "consider whether or not it is appropriate to subject the rates charged and/or paid by any Party during this 120-day period to true-up." Under such a true-up, Cherokee would be responsible for paying DEC (and ultimately, DEC's customers) the difference between the amount paid by DEC's customers under the 2012 PPA during the "extension period" and the amount that would have been paid using the avoided cost rates that result from this proceeding during that same time period. It is important to understand that DEC's customers are only protected from this ongoing overpayment in the event Cherokee actually pays such amounts to DEC.² Also, the risk exists that Cherokee could withdraw its complaint at any time, and DEC's customers would never have the benefit of a Commission-ordered "true up."

Recognizing that the Company previously argued its concern over customer impact to the Commission in both written pleadings and through oral argument in this docket, the Company does not believe efficiency would be served by reiterating those same arguments in response to this additional request for extension of the 2012 PPA. However, DEC urges the Commission to refrain from granting the indefinite extension that Cherokee requests, and requests the Commission limit any further extension to reasonable time frame, similar to the first extension granted in Order No. 2020-846. Additionally, and most importantly, the Commission should retain the option to true-up any amounts paid by DEC to Cherokee under the extension of the 2012 PPA.

² The Commission's authority to require Cherokee, which is not an electric utility subject to the Commission's jurisdiction, to refund DEC and thus, DEC's customers, pursuant to this "true up," is questionable, at best, under existing state and federal law.

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In sum, if the Commission chooses to approve Cherokee's Request and to further extend the term of the 2012 PPA at such significantly higher avoided cost rates, such extension should be for a limited, definite period of time and should be subject to a true-up upon the conclusion of this proceeding.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rebecca Dulin". The signature is fluid and cursive, with the first name "Rebecca" being more legible than the last name "Dulin".

Rebecca J. Dulin

cc: Parties of record